

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on February 19, 2003 at 3:35 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 347, 2/11/2003; SB 348,
2/11/2003; SB 358, 2/11/2003
Executive Action:

HEARING ON SB 347

Sponsor: SEN. BOB KEENAN, SD 38, Bigfork

Proponents: Jeff Folsom,
Anita Roessmann, Montana Advocacy Program
Dan Anderson, Department of Public Health & Human
Services (DPHHS)
Martie Wangan, DOA
William McCausland, Central Services Area Authority
Jani McCall, Montana Children's Initiative (MCI)
Jim Fitzgerald, Intermountain Children's Home
Gene Haire, Mental Disabilities Board of Visitors
Al Davis, Montana Health Association
Chris Christiaens, Montana Chapter National
Association of Social Workers

Opponents: Frank Lane, Eastern Montana Regional Community Mental
Health Center
Bill Kennedy, Yellowstone County Commission
Art Kleinjan, Blaine County Commission
Joan Stahl, Rosebud County Commission
Joan Krause, Golden Valley County Commission
Milton Markuson, Carter County Commission
Carol Brooker, Sanders County Commission
Don Reiger, Fallon County Commission
Julie Jordan, Garfield County Commission
Tom Paluso, Gallatin County Commission

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, said SB 347 had to do with mental health and the mental health system in the state of Montana, going back eight or nine years to the development of the managed care contract to a private corporation that began on April 1, 1997. There were many people that got involved in the development of the RFP for that proposal. The proposal did not go well. There were about three corporations that bid on that contract. These corporations were joined with providers in the state of Montana. The ultimate victor in that competition was CMG Corporation linked with the community mental health centers and ultimately CMG sold to Magellan. The contract, the RFP, was the Cadillac of a mental health system. It was not funded properly for the success of a corporation. They were losing about a million dollars a month. In 1999 the process began for getting rid of that contract and Magellan opted to leave the

contract. A fee for services model went into place for mental health services that had been in effect for the last three plus years. There had been difficulties. **SEN. KEENAN** said when he was on the subcommittee for Human Services he ended up having the deciding vote to begin the process of dissolving Magellan. Then the community mental health centers approached the capital, in mass, with many consumers. He said he heard from providers of all walks of the profession in the mental health area that they wanted to go back to a public system of care and mental health. They wanted a Montana system of care, where they could join us at the table and create a fair, effective, efficient system of care, so the problems would be solved. **SEN. KEENAN** said it had been a long four years and thought he had been on every mental health committee that existed and chaired several them. This bill was the result of this. He passed out a copy of the mental health statutes, Title 53-21, Part 2 with the existing language.

EXHIBIT (phs37a01) During the last session, the process was started for the SAA, Service Area Authorities. A consultant from Washington, D.C. with a technical assistance corporation, recommended that Montana go to a regional system of care. **SEN. KEENAN** said that when he got back onto the Mental Health Oversight Advisory Council which he chaired after the legislative session, the council had started to take the direction in the development of going toward a Service Area Authority three regional systems of care for mental health. A governance system. There was much talk and concern about that. Most of the players in the mental health system went along with this, but privately there were many conversations. Much doubt that this system was not going to happen. The cost of the private contract was \$75 million a year. Currently \$116 million was being spent a year. There had been some resistance. Much of that was because they had gone to a fee for service model where there were many more providers in mental health services than there used to be. There was an awareness in mental health. There had been many wonderful things that had happened over the last four years in dealing with the stigma of mental health, trying to draw the connection appropriately to physical health and mental health. Mental health is a biologically based brain disorder. The general effort was being made to look at that in a physical, mental health balance. He said the morning he sat and started to read the statutes and he could not believe the number of things he was reading. The statutes were originally drafted in 1975, when the federal government used to do block grants directly to community mental health centers that came about from federal legislation for construction grants for the community mental health centers. It was really the beginning of the mental health system. Since then, in 1980, Ronald Reagan established the federal block grants to go to the state to fund the community mental health centers system. In 1981, the federal government recognized that the

community mental health center system was a poor design for rural states. They had gone away from it. There was no recognition with one exception and that was for the Medicaid area for partial hospitalization. There was reference to the community mental health centers. Montana's community mental health centers did not provide that service. Montana had some antiquated statutes. He said he was struck by the existing statutes that they were a perfect fit for the development of the SAA governance system. He said he spoke to the administration at Addictive and Mental Disorders Division and expressed the great find he had made. He thought it would be a jump start so that there would not have to be a process of trying to bring people to the table and getting support for the establishment of the SAA's. He thought the SAA's could be jumped into, which would be Statute 53-21-204.

He acknowledged that mental health was a complicated system. At the request of **SEN. SCHMIDT, SEN. KEENAN** had put together a map to give a visual picture of the mental health system and what SB 347 was prescribing. **EXHIBIT (p37a02)** He said the bill offended many people when he first started working on it. In December he called a group together in Helena, the ten brightest, smartest, creative people that he could gather at a moments notice. Even if he had ostracized other people that he had worked within the mental health arena in the last four years, he did not think the mental health system had ever had an advocate that really wanted to make the system work well, who had their name on the President of the Senate's door. He thought it was an opportunity and he should take advantage of it. He did not know if it would ever happen again. **SEN. KEENAN** said he called these people together and was tired of going to meetings where nothing happened. He liked problems and finding solutions and liked people to be straight forward and honest. Those who would think about consumers and would try to get the right thing done. He explained to this group of people what he had found in Part 2 of 53-21-201 through 53-21-204. That alarmed people although it could be seen in the statutes that they were obsolete and needed to be rewritten for the sake of the consumers. He said that if the bill did not pass, no harm, no foul. The same status quo would remain that was currently in place. He said he was there to say that there was a fair measure of dysfunctions in the mental health system and that this was an attempt to get into the future. If the SAA model was the direction to be taken, then this bill was calling people who were involved in this SAA system to step up to the plate, calling their bluff. He was asking them if they truly supported it, or were the whispers true that they do not really want to get there. **SEN. KEENAN** said if so, they wanted to stay with their status quo system and watch the explosion of cost, lack of accountability, lack of local participation and somewhat dysfunctional system, then no problem. This bill would go away and he would deal with it, but sadly. He

said he was also on the Human Services subcommittee, dealing with all the Human Services budget. The committee had recently had a proposal from the community mental health centers for some differences in service arrangements, care, and coordination. Many of them were the right way to go, but they existed in statute right now. There were things in the existing statutes that were laudable, but were not being followed and had not been followed for years. He said an example was number one in 53-21-201. It was talked about a community mental health center means of facility, not necessarily encompassed within one building licensed by the DPHHS as a mental health center. There are community mental health centers and there are mental health centers, and there may be 15 in the state. There were about four community mental health centers in Montana. The community mental health centers had a link to the county governments through their board. Section 53-21-204, called for a mental health corporation. **SEN. KEENAN** said that in his mind that was an SAA model. It was a regional model made up of those people from the counties, county commissioners or designees, that would identify the service needs in that area, county by county. There would be this board, or corporation, that had general oversight over mental health in a region. He said what had happened over time in the language, was the makeup of the board had been taken to mean in practice. It had become the governance board for the community mental health centers. He thought that was a conflict of interest at the very least. He said there were county commissioners who were alarmed at what he had been trying to do. They thought he was trying to take county commissioners and consumers out of the governance of the community mental health centers. He said that was absolutely not so. The county commissioners had bylaws and they had boards. There was no question that the county commissioners should not feel threatened by taking it out of the statute. There was no reason for a private nonprofit corporation to have their board membership in the statute when there are other providers out there that offer like services. 53-21-204, Part 6 on down, the organized regional mental health corporation had several duties. He said there had been a shift from the design of a corporation with the general oversight with the community mental health centers. He said he had a great respect and had a partnership with the community mental health center in his business in his private life, which was the most satisfying thing he had done in mental health. He said coming to Helena and trying to work on mental health had been one of the most frustrating things he had done in his life. He said the duties of the corporation, as they were outlined, were laudable. They were great duties. He read a few of those such as an "annual review and evaluation of mental health needs and centers within the region." He said that was good. "Preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide

and support mental health services within that region." He said he wished there was more of that being done. "An establishment of recommendations of a proportionate level of financial participation of each of the counties within the region, in the provision of mental health services." **SEN. KEENAN** said that was very important. Currently, there were a million dollars of voluntary contributions from the counties across the state of Montana out of a \$116 million budget. He said the statute called for a proportionate level of financial participation of each county within the region. He said he had looked at that and thought if the SAA's would become the corporations and would get into the duties, a big problem would be solved. He said if the county governments really cared about mental health, it would become a priority for them and they would by law be stepping up to the plate and(d) in the statute was receipt of administration of money. He said (e), "supervision of appropriate administrative staff," was not a problem. "Keeping all records of the board, making reports" was not a problem. "Regional mental health board members must be reimbursed for fund . . . " was fine. He said number eight was extremely important and long and wanted to read it because it was not happening. If it were being lived up to the last 25 to 27 years, there might be a decent system. He read from the statute: "Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region, an annual budget, specifying each county recommended proportionate share. If the board of county commissioners included in the county budget the counties proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the counties' general fund, subject to 151-10-420. If the general fund is insufficient to meet the approved budget, a levy may be made on the taxable evaluation of the county in addition to all other taxes allowed by law to be levied on that property." He said that was the funding mechanism for mental health. If mental health were truly the priority at the county level, they had a mechanism to take care of it and not come every two years and tell the legislature that they had underfunded mental health. He said when the legislature delved into the governance, the counties would in turn tell them it was none of their business. He said the counties wanted them to stay out of their business, their boards, and not change our governance, but send money. **SEN. KEENAN** said he had a problem with that. He went on to number nine, "the regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services." He said from what he understood, that did not happen. He asked if a single provider of service was what they really wanted, have their board establishing fees and have a special

designation for this non-private, nonprofit, where the board was in the statute.

He said in the past there was some competition. He said admittedly competition in medicine in the healthcare field did not necessarily mean cost savings. He said when a person was sick, he wanted to go to the person he was comfortable with and gives the best service. It was not a price consideration. He saw in number eight, a partnership with the state, recognizing the needs for service in those regions. **SEN. KEENAN** had amendments he passed out (see exhibit 1). There had been a problem regarding a site inspection at the Montana State Hospital where there had been some conflict and disagreement about the professional levels and some prescriptions and some things that were complicated. He said he looked at the legislation that had passed two years ago concerning the **Board of Visitors**. He thought that in Part 7, it was too stiff of language and that there needed to be more interaction back and forth between the Board of Visitor's and the facility that was to be inspected. He said he repealed two sections in the bill because he wondered what would happen if the Board of Visitor's had been wrong. The facility would not have had any recourse. He worked with the Board of Visitor's and came up with the language in the amendment. At the top of the amendment were "duties of the department." In the last couple days, through the process in the subcommittee, he had a proposed model that came out of the central SAA committee. It covered the area from Browning to Bozeman. In the model, Addictive Mental Disorders Division delegated responsibilities to the SAA's. **SEN. KEENAN** said it was an excellent document and it provided the list of services seen in the amendment: *"Provider contracting and credentialing."* There was some provider contracting, but not enough. There really were not any bids put out for this. Credentialing did not happen. He said he was not sure service planning was being done as prescribed by current law and it needed to be enhanced. He said there were 185 people budgeted for at the Montana State Hospital. It was over budget and over capacity. The language for community health centers to do screening for admissions had been in the statute for a long time, and yet now it was part of a proposal to begin doing that. He said that was part of what he had found in the statute that bothered him. He said there was *"Quality Management"* at AMDD. *"Utilization Management and Review,"* some was being done now. *"Consumer and Family Education"* was handled by a couple of dedicated mental health advocates in Helena that travel around. He said that on the chart he handed out, those duties were put forth for the regional SAA to live with. He thought it appropriate in the transition to the SAA that duties of the department to include those things, to make sure the department was prepared to do those things as they should be done.

Proponents' Testimony:

Jeff Folsom, AWARE Inc., said he stood in support of SB 347 and the amendments **SEN. KEENAN** had proposed. He said the bill reflected a great opportunity to examine the current mental health system. Underlying the specifics of the bill, which was fairly complicated, there were some fundamental questions at the heart of the bill about system design and how steps were taken forward in the mental health system. He said the current system was designed by the federal government, the Community Mental Health Center Act, in 1961. It was started in Montana in 1975. In 1981, it was repealed by the federal government and changed. It was determined that the system was not working well and it did not work well for rural states. **Mr. Folsom** said to relook at the system and question if it was the kind of system that was going to move us forward. For the last ten years, the mental health system had been frustrating. It had been perceived to fail, in spite of the few successes, and it continued to struggle. The struggle was about remaining unchanged. He liked the bill because it was about moving the system away from the status quo, and taking the opportunity to look at how the system was run. He said that despite how appropriations were and how much funding was put in the mental health system, it was always going to come up short. That had been the experience so far. This bill, no matter the allocation, was about how to decide the best way to use it and how should government get guidance in making those hard decisions. He said change was hard. Change leads to fear, fear leads to people believing that this would bring forward parts that would not happen. He had heard consumers would be pushed out of the process, when this bill would bring consumers more into the process. He said he heard county government was concerned about being pushed out of the process. This bill gave county government more opportunity for control, not less. He repeated that change was hard and added that mistakes would be made. The system would not be perfect. The system currently in place was not perfect. What was important was to move into a new system, into a new design and move forward to that. The bill did not have to be perfect. It had to give opportunity and hope. He said he thought it did that. It was an impetus for a vision. It brought an opportunity for new leadership and a vision to the mental health system. It brought opportunities for consumers and other stake holders to give voice to that vision. It gave them control, while it gave the state opportunity to oversee that balance out the needs of the state as well. He said most importantly the bills provided hope for consumers, hope for the possibility that there will be choice and hope for a level playing field in the system that moved forward so decisions would

be made for the future, that would serve the people of Montana better.

Anita Roessmann, Montana Advocacy Program, read and submitted her written testimony. **EXHIBIT (phs37a03)**

Dan Anderson, DPHHS, said he was a proponent of SB 347, although he would point out two areas of the bill where he believed amendments were called for. **EXHIBIT (phs37a04)** There were two big pieces to the bill. There was the SAA piece in Section 3, which describes the Service Area Authorities. The second big piece was in the repealer section of the law in Section 11. The repeals Sections 53-21-201 through 53-21-214. The SAA idea was to create at the community level a way to manage the public mental health system in a way that both met the needs of the people who used that system and did it in a cost effective and efficient way. He said the department supported that process and thought the bill moved that forward by having the legislature endorse the continuing efforts on that process. It was a difficult process. When the department went into the managed care program in 1997, the department hired a big company to come in and do the work for them. They did not do it very successfully, although it had been a company that had been doing this in other states and in other kinds of venues. Bringing together consumers had been difficult, family members, advocates, and others and asking the company to develop the kind of expertise that even a national company did not have. **Mr. Anderson** said where he had trouble with the bill was that it was presented as either/or. He said he agreed with **SEN. KEENAN** and other proponents that much of the language was antiquated. He did agree that the community mental health centers were just another health provider in many respects. He said where they were unique was that they were created by the counties. They have a direct link, roots, to county government. Through those roots they felt they had a special responsibility toward meeting the needs of their community and their geographic areas. He said that was not to say that they or any other provider or any other state agency had always met every need perfectly. He said he believed that, having worked with the community mental health centers over the past twenty years, there was a special responsibility they felt in meeting their local needs. He said his proposal was to go along with the idea of repealing several sections dealing with community mental health centers, but to insert a more clear, modern definition of community mental health centers. This would allow in law to have a group of mental health centers that were special in that they were created by the counties coming together to create an organization that provided mental health services. He said passing this bill would not make the community mental health centers disappear. If they wanted to continue to operate as

private nonprofit organizations with the same board makeup, they could. **Mr. Anderson** said what he was afraid of was that in some counties their interest in being part of the mental health process, the governance of the organization, contributing finance to the process, might diminish by not having some recognized status in state law. There were some practical reasons on financing. The counties contribute about \$1 million per year to the community mental health centers. That was a small sum of money compared with the entire public mental health budget, but it was a substantial amount. In the next biennium, there were plans of taking that money through the department and matching it with Medicaid money to create more money. In state law, the community mental health centers screen voluntary admissions to the state hospital, which was another reason to keep those agencies identified in state law so that process goes on. He said that process was very successful in that only people that need to be in the hospital on a voluntary basis go there. The department was proposing legislation that would require judges to use the community mental health centers on involuntary commitments as well. The reason those agencies were selected was because they had served the seriously mentally ill adult population for more than 30 years. They had the most experience and expertise with that population. He agreed and strongly supported with the previous opponent that this was an opportunity to go in a new direction with the SAA's. He said he did not see the necessity while diminishing or no longer recognizing the community mental health centers. People had spoken on the need for stability in the system and one way of creating instability would be to take a part of state law and eliminate a description of the important providers. He concluded by saying he realized he had not talked much like a proponent but reaffirmed that he was and had an amendment that he believed would keep the main purpose of the bill and yet meets some of his objections.

{Tape: 1; Side: A}

Martie Wangen, DOA, said she represented the Montana Psychological Association, which consisted of 100 doctorate level professionals in mental health across the state. She thanked **SEN. KEENAN** for bringing forth the bill and his cooperation and time he spent working with her association on the bill. She said they initially had two concerns with the bill. One, that private providers were not included in the SAA. The Central SAA that had been operating did include private providers. She said that **SEN. KEENAN** had a copy of their amendments. **EXHIBIT (phs37a05)** The other problem they initially had with the bill was removing any of the duties the Mental Health Disability Board of Visitors. It was her understanding that the amendments would clear that up.

SEN. KEENAN had worked with the association on the amendments, and with the amendments, asked for a DO PASS on SB 347.

William McCausland, Central Services Area Authority, said he was a member of the Central SAA planning group. He said he favored SB 347, especially the first part on Sections 1-8, concerning the SAA. He said there was not a plan to eliminate the community mental health centers. The SAA's brought control and oversight to the consumers, family members, and advocates, and to the providers. There were some providers in the planning group as well.

Jani McCall, Montana Children's Initiative (MCI), said MCI was made up of 14 children's mental health and multi-agency providers in the state of Montana. She thanked **SEN. KEENAN** for his support and advocacy for mental health over the years and thanked him for bringing forward this bill. She said the whole idea of the SAA was well regarded. It was a process that started and generated with the AMDD. It made good sense and she believed that putting it into the statute would strengthen that piece. There are three areas that had been in planning, one each in western Montana, central Montana and eastern Montana. She said MCI strongly believed that it was an important part of the bill. **Ms. McCall** said she wanted to address the repealer section, but wanted to first state her respect for the community mental health centers. They were colleagues and she had worked with them for many years. They provided valuable important work. She said the repealers were about leveling the playing field and providing new opportunity in looking at badly needed systemic change. The bill would allow the opportunity for other providers to be involved in the process and for access and choice. This was not only for providers, but for consumers. She said this bill would do nothing to harm the status of the community mental health centers. It would do nothing to their board structure. They would continue to operate as they had in the past. The bill did not allow for a specific class of providers to be recognized in the statute, while others were not. It did provide for equal opportunity for other viable businesses. She said with that she strongly urged support.

Jim Fitzgerald, Intermountain Children's Home (IHC), stated he was the executive director of IHC, where he had worked for 25 years in children's mental health. He said he was a proponent of SB 347, particularly based on the issues around governance with the SAA. He said he had been involved for the last 12 months with the Central SAA, working to move that along. He said he would support the idea that the crisis mental health was currently in was not as much a budget crisis as it was a governance crisis. Over the years it had seemed there was not a

way to get to rational governance around administration, fiscal constraints, service planning and delivery within the mental health system. **Mr. Fitzgerald** said Montana was still not there. Instability was what was wreaking havoc on the consumers and providers, not the budget crisis. It disrupted delivery of services, punished providers and continued to plunge the department into endless cycles of reactive crisis management. He said what was needed was a community governance structure that integrated administration, service planning and delivery, and fiscal constraint into one concern at the local level. Accountability would not be achieved until there was governance. If governance promised to save money, establish stability and better serve consumers, than governance needed to be taken seriously with change. If a new outcome was sought, something different needed to be done. He said the consumers needed to be remembered and those who were paying the bill as systemic change was looked at.

Gene Haire, Mental Disabilities Board of Visitors, said he was the executive director of the Mental Disabilities **Board of Visitors**. He said he was testifying in support of SB 347 regarding the SAA sections of the bill; the board supported the provisions in the bill. The Board of Visitors conducted onsite reviews of all the mental health facilities in Montana. In most of the reviews they found excellent services provided by all the providers. He said he wanted to echo some comments of the other proponents regarding the community mental health centers. The community mental health centers historically had been the organizations that had been responsible for assuring that all the key service components that were necessary to support adults and children in the communities were present. He said there may be room for more discussion regarding the sections of the bill related to community mental health centers, insomuch as there was a real need to maintain the key service components in each community. Regarding Section 9 of the bill that addressed the powers and duties of the Mental Disabilities Board of Visitors, the language change provided a good middle ground and he supported that.

Al Davis, Montana Mental Health Association, said he was there to represent the Mental Health Association, which was a nonprofit organization that represented interested citizens across the state in matters regarding mental health and mental illness. He said the association supported SB 347, primarily for all the reasons that had been previously stated. He said that simultaneously they had many of the same concerns that had been previously stated as well. **Mr. Davis** said the framework resulting from the piece of legislation, from the SAA bill, would allow a better chance for stabilization and vision accomplishment. They

had concern about pieces of the bill, but had confidence that the diversified people who worked on the bill would reckon and deal with the issues that caused concern. He hoped the bill would allow enough flexibility to allow for the calibrating to occur.

Chris Christiaens, Montana Chapter National Association of Social Workers, said they stood in support of the bill and some of the amendments that had been brought forward. They saw the movement was something that had to be addressed. He said Montana could not afford, nor will there ever be enough money to continue in a fee for service basis. He said that a different direction needed to take place and the SAA was one of those possibilities that needed to start forward. This would allow managed care on a local level, the ability to provide services to the mentally ill in the least restrictive environment, and the ability to ask for consumers to be involved in the treatment for them and their families. **Mr. Christiaens** said there were areas that social workers had concerns with, but thought they could be worked out with amendments and urged support for SB 347. He said this model was something Montana should have followed when the contract for managed care services was entered five years ago, which was such a disaster. This piece of legislation would give the opportunity to come back in two years with some proof that it worked.

Opponents' Testimony:

Frank Lane, Eastern Montana Regional Community Mental Health Center, said he was the Executive Director of the Eastern Montana Community Mental Health Center and President of the Rocky Mountain Council of Community Mental Health Centers, which was an organization of 75 mental health centers in eight states. He said he was currently second vice-president of The National Council of Community Behavioral Health Care, which was an organization of 750 mental health centers nation wide. He was there to represent the Montana Council of Community Mental Health Centers to share their concerns they had with SB 347. The first concern was on Page 2, Section 6. It said "shall establish qualified provider certification standards by rule, which include requirements for national certification for mental health programs that receive funds from the department." He said this would require that every mental health provider in the state have national accreditation from one of the national accreditation bodies. He said there were 62 hospitals in the state and only 13 of them had national accreditation. He said it did not seem like there were any funding strings tied to national accreditation. It was a very costly process. The licensing regulations that mental health centers have to go through being multi-page thick to assure adequate quality of care. **Mr. Lane** said he would encourage to change either the wording or cross

that section out completely. The other concern they had was the repealer sections. He said that when he introduced himself, he said he was **Frank Lane**, executive director of Eastern Montana Community Mental Health Center. He said he wanted to emphasize the word community and had held the position for 29 1/2 years. He worked for them for 32 years. He said they took the term community very seriously. Their mission statement said they were committed to helping provide safe and secure communities. One thing done was 24 hour psychiatric emergency care, 365 days a year, in every community in eastern Montana. Last weekend there were 16 emergencies, just in Miles City. It was common for there to be 30-35 emergencies in eastern Montana. He said he did not see any other specialty providers doing that. When Carl Reese burned that family to death in Miles City, his mental health center sent a team to the hospital to do crisis intervention with the first responders and the emergency room staff. They never got paid for that. When the boy, who was now in the Montana State Prison, shot all those people in Glendive, he sent a team there to do crisis intervention with the whole neighborhood and they never got paid for that. **Mr. Lane** said they were a community mental health center. When an eighth grader committed suicide in Broadus, MT, a few years ago, he sent five staff to meet with every child in that grade school and with every set of parents and every teacher. A community mental health center did that. It was their mission. The law says they should do that. He urged to keep the community mental health centers in the legislation. He urged for adoption of **Mr. Anderson's** amendments and said they did not have any problem with the SAA concept. They encouraged consumer and family involvement in the planning of mental health services in the state. He said Montana would be the only state he knew of that did not have a statute referencing community mental health centers if sections were repealed or did not adopt **Mr. Anderson's** amendments. **Mr. Lane** said that every year by June 10 he submitted a budget and a plan to his board for the mental health needs for the citizens of eastern Montana, based upon the resources that might be available. He said they had been doing that for 36 years. Service was provided in every county seat on a regular basis. He repeated that the repealer section was not necessary. The other concern he had was in Section 12, Part 2b, where the sheriff had to refer the inmate to the nearest SAA. He said the SAA concept in reality was still a year or two away at the earliest. If this were to be adopted by July 1, sheriffs would be required to refer people to a nonexistent entity if the community mental health centers are repealed out of the law.

Bill Kennedy, Yellowstone County Commissioner, vice-president of the Montana Association of Counties, said he chaired the Health and Human Services committee on the Association of Counties. He

acknowledged with respect and appreciation all the things **SEN. KEENAN** had done for mental health in the last several years, but opposed him on SB 347. **Mr. Kennedy** said he was there representing county commissioners across the state. The CMHC's have been in Montana law for approximately 30 years and clearly had a close relationship with counties. The governing boards comprised of county commissioners from each county in the regions they served. They believed the CMHC's had a direct tie to the public welfare in each of the smaller communities. He invited the committee members to their mental health advisory board meetings across Region Three. He said they were an active group of county commissioners that interacted with the people in the community always. **Mr. Kennedy** said with that relationship, each county contributes a certain amount for the mental health centers to provide services in their counties. He said funds were talked about earlier and wanted to address that. The counties contribute per capita, which was not required, but do it anyway. The counties also pay state income tax dollars that went into the state general fund. These dollars went directly into DPHHS also to fund mental health services, which made them feel a big part of the mental health system, and that money came from their communities. They did not want community mental health centers taken out of law and replaced with SAA. The reality was that the SAA had no funding and probably no potential to be created for some time. He said they would like to see the SAA's, but if the CMHC's were repealed and the nonexistent SAA's were put into the statute, then there would be no organization in Montana assuming the responsibilities that the CMHC's have held for 30 years. His recommendation would be to give the SAA some position in the statute, but allow at least two years for the development and maturity of the group. This was so that they could be certain the funds were to be available. The SAA could pick up the obligations, but also to leave the community mental health centers in law so there would be no disruption in the current system. If the community center law was repealed, there were a few counties who would no longer feel an obligation and would withdraw their funds from the system. He said the county commissioners wanted to be involved. The net effect of SB 347 as it was written could be dismantling of the existing adult mental health services. He said he would support a no vote on SB 347.

Art Kleinjan, Blaine County Commissioner, stated he was also chairman of the Golden Triangle CMHC in Great Falls. He said he had served as chairman for the last 12-14 years and been on the board for more than 20 years. He said he saw many changes and wanted to thank **SEN. KEENAN** for his dedication to mental health, but needed to oppose the bill. He said Golden Triangle provided the same services as Eastern Montana. They were available to

thirteen counties. Mr. Kleinjan said he did not agree that with the CMHC's taken out of law and the SAA's put in, the community centers would survive. He said he thought it would finish them. He took offense to the comment made that commissioners did not care. He said he went to every meeting, every month for the last 20 or more years, despite mud, snow, sleet, and rain. He said he was dedicated and will always be dedicated to those who needed help. He did not think there was any commissioner that served on the board that was not as dedicated as he was. He said that keeping the CMHC's active was essential but also agreed that there may be a place for the SAA's. He said he agreed with **Mr. Lane** that if they had to be accredited nationally, badly needed money would have to be used to make that accreditation possible.

He stated he was a frugal commissioner and said "oldtightwad" was his email address, which was given to him in earnest. He said he heard previous testimony saying money came from the general fund and they were allowed to levy. Blaine County did levy for the support of the mental health centers and did not take it out of the general fund. He said he heard that the counties were not doing a very good job and he thought they were adequately doing their job. He urged a no vote on SB 347.

Joan Stahl, Rosebud County Commissioner, said she chaired the Eastern Montana Community Mental Health Board. She said she supported the previous opponents' testimony and that the CMHC does care. The fact that there were satellite offices in every community in eastern Montana was something she did not think the SAA's could do. She said the CMHC's do a good job and did not want them written out of the law. She wondered if DPHHS could handle it right now because they were currently handling a lot.

Joan Krause, Golden Valley County County Commissioner, said she sat on the advisory board of the South Central Community Mental Health Center. She said she agreed with **Mr. Kennedy** and all that he suggested. She said that sitting on the boards of the mental health centers to keep some local control of their monies was important for county commissioners. She said her county shared a satellite office with Musselshell County, which was with the mental health center in Billings and had good luck with it.

Milton Markuson, Carter County Commissioner, supported **Mr. Lane** regarding this bill. He said he had sat on the mental health board in eastern Montana for 16 years and had been a past chairman, and a past chairman for the Health and Human Services Board. He said he was also the consumer family advocate on the board. He said he did not believe with the changes being proposed in the bill that there would be the coverage in Hammond or Ridge, Montana.

Carol Brooker, Sanders County Commissioner, said she was president of Montana Association of Counties and was the vice chair of the Western Montana Community Mental Health Center. She said she wanted to go on record that she opposed SB 347. She said she was from a rural county and town but still got great service, even in the middle of the night and wanted that to be continued.

Don Reiger, Fallon County Commissioner, stated that he was from Baker and served as a director on the Eastern Montana Community Mental Health Center. As a county and as a director he wanted to go on record opposing SB 347.

Julie Jordan, Garfield County Commissioner, stated she wanted to go on record for the county opposing SB 347.

Tom Paluso, Gallatin County Commissioner, said he was a member of the Mental Health Oversight Advisory Council, and the planning board for the SAA. He said being part of the Montana Association of Counties, he had a lot invested in the concept of the SAA's.

{Tape: 1; Side: B}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON, SD 15, Bozeman said she thought **SEN. KEENAN** was trying to move Montana toward a real SAA system. If the amendments **Mr. Anderson** presented, which gave a statutory place for the CMHC's, and recognized the county and CMHC relationship, would he support the bill. **Mr. Kennedy** said he would with some hesitation. He wanted to see the statutes stay the same for the CMHC's with **Mr. Anderson's** amendments and to keep the SAA's in the bill. He said he did not want to see any changes in the CMHC forum.

SEN. STONINGTON asked **Mr. Kennedy** why. **Mr. Kennedy** said he wanted the county commissioners in the loop and to be able to look at the changes first.

SEN. STONINGTON wanted to make sure she understood him correctly. She asked if his opposition to the amendments that **Mr. Anderson** proposed and to the repealers was that it was too much too fast. **Mr. Kennedy** said yes.

SEN. STONINGTON asked **SEN. KEENAN** what his response would be if the repealers were omitted. **SEN. KEENAN** said that like in his opening, if the bill did not pass, then there was the same status

quo, same system, life went on. He said he was not concerned about it and appreciated the discussion. He said the issues were what he had been dealing with every day for the last four years. He was glad to have some of the names of the county commissioners so he could call them. When people called him to complain about not being able to get emergency crisis care in some community around the counties in the state, he could refer those people to the county commissioners. He said he wanted to give a quick short answer but did not think he could. He said he thought it inappropriate to have a special designation for the board membership of a private nonprofit as opposed to any other private nonprofits in the state. He said he thought the CMHC's did a good job and that they were part of a network of care. He said there were not going to be any other private nonprofit providers in the statute. **SEN. KEENAN** said he was glad to hear the commitment of the county commissioners toward the mental health system. He said he hoped that equated with more of a partnership in the funding of the system rather than \$1 million out of, or a per capita fee, assessment or levy that they put on means of getting \$900,000. Every person in Montana was contributing a dollar to the mental health system through the CMHC, through the county matches.

SEN. STONINGTON said she immensely appreciated what **SEN. KEENAN** was trying to do. She said she had been working with him since before the session began on the entire arena of mental health services for the state of Montana. She said he was making a bold effort. She hoped that in going forward, they could find something that would be a step forward, even if it were not the whole ball of wax. **SEN. STONINGTON** wanted to know how **SEN. KEENAN** felt about the amendments **Mr. Anderson** proposed. **SEN. KEENAN** said he had not had a chance to look at them to see how they all matched up. He said he was willing to work to find common ground.

SEN. TRUDI SCHMIDT, SD 21, Great Falls, referred to **Mr. Christiaens** testimony regarding the social workers' concern for some areas of the bill and wondered what those areas were. **Mr. Christiaens** had left and **Milton Markuson** thought he could answer that, but could not.

SEN. SCHMIDT said on Page 12, Line 8 "refer the inmate to the nearest community service area authority, as provided in [Sections 1 through 5], for referral to a mental health center . . ." might be a concern and asked **SEN. KEENAN'S** response. **SEN. KEENAN** said that when brought up he did feel uncomfortable with it. It needed to be addressed. He had originally informally asked the Human Service subcommittee if they wanted him to break the bill in two and put the SAA language in separately. There was

not any interest in that. He said he agreed that it was awkward and premature. He thought there should be a regional planner that could do what the SAA might be able to do, so that there was one person contracting, assessing the needs, and communicating with the county commissioners.

SEN. SCHMIDT asked what the Montana Chapter of Social Workers concerns were of the bill. **Mr. Christiaens** said the amendments that came in from the department would take care of the social workers' needs. He said they really supported the idea of the SAA becoming a pilot from which others could be modeled. It was never the social workers' intentions that mental health centers be totally out of the picture. He referred to the amendments proposed by the psychiatric organization and believed that they added to the bill, rather than detracted.

SEN. SCHMIDT said on Page 2, Line 7, Number 6, accreditation was mentioned and asked if **Mr. Christiaens** was the one who wanted the word "must" in there. **Mr. Christiaens** said no. They had not talked about that or made a stand on it, but believed that the higher the credentials of the people delivering service, the better for the consumer.

SEN. JOHN BOHLINGER, SD 7 Billings, referred to **Mr. Lane's** testimony, where he expressed concern for language found on Page 2, Line 6. **SEN. BOHLINGER** said that **Mr. Lane** was troubled by the "must have national accreditation," and had stated that Montana had 62 hospitals in the state and that only 13 were nationally accredited. **SEN. BOHLINGER** asked **SEN. KEENAN** what his thoughts were on that. **SEN. KEENAN** said that was exactly right. He said that it should be "may," not "must."

SEN. DUANE GRIMES, SD 20, Clancy, asked if a community mental health center was a licensed health center. **Mr. Anderson** said yes.

SEN. GRIMES said he had been looking at Page 4 of the bill, lines 18 and 19, that it did not say that it was a licensed center. It said, "may not be construed to prevent the continuation of services by or the facilities of existing community mental health centers." He saw up above on Page 4, Line 11, it allowed for continuing contracts with licensed mental health centers. He asked for clarification on the intent of the amendments. He asked if it were designed so that there would be more specifics regarding services that needed to be provided. **Mr. Anderson** said his amendment did two things. It created a special class of mental health centers created by the counties and that was required to provide a certain range of services.

SEN. GRIMES asked if the real issue was the tie to the county.

Mr. Anderson said yes.

SEN. GRIMES said he could see where the county commissioners had some concerns. He saw there was an issue on services provided, that might not be getting done and the purpose of the SAA's. He had not figured out how the two would mesh. He asked if it were more of a funding issue because of what was said earlier that the CMHC's were developed more for outcomes, rather than they were for services. **Ms. Roessmann** said the SAA's were conceived in the tech report and operated in some states as managed care entities that operated on a regional level. They were close to the communities and the needs in the communities. The SAA's would receive money from the state to pay for the services needed in the region. They would decide for which services they were paying for and how much they were paying for them. They would contract with providers to provide special categories of services, which was much like what the department was doing now.

Ms. Roessmann said it had been talked about that the SAA's were probably a couple of years away from there being a functioning SAA in the state. Many things had not been worked out yet. She said the SAA vision developed for the central region was very much a Montana product. There were things that could be done in Montana, but not in other states, because things had gotten really big in those states. Montana was still small enough that people in communities, like the county commissioners, could honestly take ownership of the services being delivered in their communities. SAA's would be incorporated entities that would manage funds in response to what the communities were saying that they need. **Ms. Roessmann** said that some had testified earlier that community mental health centers had not lived up to all of their promises. She thought this was why the federal law was repealed in 1981. There were still people calling to say they could not get what they needed. She believed the SAA's would start filling some of those gaps. In spite of all the CMHC's have managed to do around the state, they were still business entities. They could not be the people who managed the funds and decide what would and would not be paid for.

SEN. GRIMES asked if the counties should be on the SAA and wondered if it would alleviate some concerns several had expressed. **Ms. Roessmann** said absolutely and that they needed to help work out what kind of involvement they would like. Right now in the central region there was a congress that consisted of a growing group of at least 50 people. This included predominately consumers and family members who gather from all over the state who meets on a Saturday, every couple of months, and meet all day to work out the vision for this. It was a smaller task group of 14 people that included consumers,

providers, and advocates. It did not include county commissioners. She said they should know more about the meetings so they would have a say in how this developed as the concept continued to get flushed out.

Closing by Sponsor:

SEN. BOB KEENAN said it was an important bill and appreciated the help and input given. There was not any question that there was middle ground to be found. He said he believed his being there was the right thing to do and if not, he was glad the people who disagreed came to speak. He hoped that they would now sit with him and work on the problem.

HEARING ON SB 348

Sponsor: **SEN. BOB KEENAN, SD 38, Bigfork**

Proponents: **Dan Anderson, DPHHS**
Bill Kennedy, Yellowstone County Commission
Kathy McGowan, Montana Council of Community Mental
Health Centers
Jani McCall, MCI, Deaconess Billings Clinic
Tom Peluso, DPHHS

Opponents: None.

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, said that SB 348 was a proposal for the Behavioral Health Inpatient Facilities. It related to a new concept for mental health in contracting, establishing, and regulating Behavioral Health Inpatient Facilities, or BHIF's. There had been discussions in Billings to create this. It had to do with alleviating the over crowding at Warm Springs and to try to have a community facility to alleviate the transportation problems as well. He said **Mr. Anderson** with AMDD was there to explain the bill.

Proponents' Testimony:

Dan Anderson, DPHHS, thanked **SEN. KEENAN** for sponsoring SB 348. He said it was a bill to create a new type of inpatient service for people with serious mental illness who would otherwise end up in the Montana State Hospital. The kinds of people would be in two different legal situations. One would be where people were being held on an involuntary detention, which meant their mental illness had gotten to the point where they had to be taken into

custody, but held in a health care facility as required by law. This was until a decision was made whether to commit them to the state hospital or perhaps a decision would be made to discharge them. The second group of people were the ones who were in fact committed. They were taken before a judge who decided their mental illness was so severe that they were unable voluntarily to seek services, so they are committed for involuntary treatment. The bill defined a new type of facility called a Behavioral Health Inpatient Facility, or BHIF. Secondly, it allowed the department to adopt rules on how many BHIF's were needed, how big they should be, and where they should be. It gave the department the ability to contract with the BHIF's to serve people who are involuntarily committed. It created a preference for using a BHIF, rather than the state hospital. If there was a bed available in a BHIF before the State Hospital that would be the choice. It provided a transfer from a BHIF to the State Hospital.

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In Arizona, these facilities were called Psychiatric Health Facilities, PHF. If involuntarily committed in Arizona, the person had to go to a PHF for the first 29 days. If more than 28 days were needed, then the person would be transferred to the Arizona State Hospital. What was found was the rate of admissions were dramatically reduced because most who were given up to 28 days of intensive inpatient care at the local level could be discharged within that time. **Mr. Anderson** said that the way a BHIF could be defined was that it could be part of a general hospital psychiatric unit, where a piece of the unit would be contracted for beds or it could be a free standing licensed facility. This would be a facility that could provide hospital level psychiatric care. In the initial assessment, BHIF's were included in the budget presentations as a way to alleviate some over crowding at the State Hospital. In the first budget analysis, the department had thought the state could use about 45 beds. That would be three 15-bed facilities. When the department went through the budget process and questions were raised about the facilities, about whether it was time to invest in three new facilities, it was suggested they create one BHIF. During the biennium they could see how it worked. He said the advantages to using that level of service was that one, people would be treated closer to home, maintain better contact with their families, and maintain better contact with the providers that would be serving them once they were discharged. Second, there would be reduced lengths of stay. Finally, it provided more access to federal funding. One characteristic of a large state hospital in any state was Medicaid reimbursement was not available for people in those facilities if they were between the ages of 21-64. In a small facility, or one that was part of a

general hospital, Medicaid was available. Some services that were currently being paid with 100% general fund monies at the state hospital, now there could be some federal cost sharing for those services. **Mr. Anderson** said the department believed that it was a better service that should be developed for patients in terms of care and their ability to return home when possible, and it had a positive financial outcome for the state.

Bill Kennedy, Yellowstone County Commission, said he came in support of SB 348. He said he thought the BHIF's were a good starting point to try to address the local problems and bring service within the region. His local community was willing to go forward with the initial pilot to see how well it worked.

Kathy McGowan, Montana Council of Community Mental Health Centers, said several of her representatives had traveled to Arizona and other places to look at the BHIF's and were very supportive.

Jani McCall, MCI, Deaconess Billings Clinic, stated that Deaconess Billings Clinic (DBC) was also a member of MCI. She said both organizations were in total support of SB 348 and thought it was the most progressive piece of change that the department has brought forward at the time. She said **Mr. Anderson** was right on target in terms of what was trying to bring people closer to home, shorter lengths of stay, services faster. Deaconess Billings Clinic was the one hospital that was working for the department in terms of looking at a contract to provide one of these Behavioral Health Intensive Facilities. She said she had 3-4 amendments that she had previously gone over with **Mr. Anderson** and **SEN. KEENAN** knew about these amendments but had not had a chance to see them yet. On Page 1, Line 25, insert language at the end of the sentence, after "available" and include, "and agree to accept transfer of the patient based on admission criteria." This amendment was to state that admission criteria would need to be established, which would be done based on the contract DBC was currently working on with AMDD. The second amendment was on Page 2, Line 6. **Ms. McCall** requested "intensive" be stricken and that "inpatient" be added. The third amendment was on lines 11 and 12. She asked that the entire section be stricken. The reason being that originally there was to be four of the BHIF's and now only one was being looked at as a pilot. She said it would be preferred to see language about reimbursements dealt within the contract and not within SB 348. The next amendment was on page 3, line 2. To be consistent, strike "intensive" and "inpatient" was already currently there. The last amendment was on page 10, line 11 after "available," add "and agree to accept transfer of the patient based on admission criteria."

Tom Peluso, DPHHS, said he supported the bill. He said that Bozeman Deaconess Hospital commissioned a business plan study of a BHIF to be built in the Bozeman area with AMDD and also with Western Montana Community Mental Health Centers. The feasibility study showed that it was a feasible project.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. KEENAN thanked those for coming and closed.

HEARING ON SB 358

Sponsor: **SEN. JIM ELLIOTT, SD 36, Trout Creek**

Proponents: **Linda Lemire, Montana Chapter of American Massage Therapy Association**
Steven Biggs, Chiropractic Physician
Diane Williford, Massage Therapist
Paul Weston, Massage Therapist
Cheri DesMarais, Massage Therapist
Bill Countryman, Helena
Steve Anderson, Physical Therapists Association
Ruth Marion, Massage Therapist
Daryl Birch, Contact Comfort Inc.
Roland Byrd, Massage Therapist
Robert Kerrick Murray, Helena
Lisa Fairman, Helena
Ron Floyd, Massage Therapist
Connie Clark, Billings
Nicole Kay, Massage Therapist

Opponents: **Henry Cloud, Massage Therapist**
Erik Andersen, Massage Therapist
Hervey Perez, Montana Association of Bodywork and Massage Therapy
Esther DeRusha, School of Good Medicine Massage
Brenda Carpenter, Massage Therapist
Jim Brown, Department of Labor & Industry

Nancy Dunne, American Association of Naturopathic Physicians

Viana Myles, St. John Neuromuscular

Susan Carlson, Massage Therapist

Winthrop Benson, Licensed Massage Therapist

Patty Johnson, Massage Therapist

Kim Keil, Massage Therapist

Sheri Anderson, Massage Therapist

Theresa Miller, Stillwater Chiropractic Clinic

Sharon Walker, Massage Therapist

Tony Rabino, Anaconda

Celeste Watson, Massage Therapist

Lindsay Schott, Whitefish

Patti Ford, Massage Therapist

Karen Roberts, Massage Therapist

Opening Statement by Sponsor:

SEN. JIM ELLIOTT, SD 36, Trout Creek, said SB 358 was the product of a coalition of massage therapists organizations and body work organizations. The American Massage Therapy Association felt it was time to bring regulation to their trade. Currently there was not any regulation of any type of massage therapy in Montana. He said the profession was growing and there were about 1000 massage therapists in Montana and it was time to protect the public safety and health. It was time to provide some standard for massage therapists. He said the coalition started the process two and half years ago. The coalition had been working on SB 358 diligently for the past year. He said there was some controversy regarding the bill. Part of the controversy was due to misunderstandings, part of it was due to misinterpretation, and part of it was due to misinformation. **SEN. ELLIOTT** said there were substantial amendments to the bill and felt many concerns were addressed in them. He said there would be opponents testimony that this was a bill designed to put people out of work and that was not the intention. It was a bill brought forward by a trade that wished to regulate itself both for the protection of the public and to hold overall massage therapy to a high professional standard. **SEN. ELLIOTT** passed out the amendments for SB 358. **EXHIBIT (phs37a06)** The bill provides currently for a temporary license. The amendments strike the temporary license and provide a permanent license. There were references in the bill. One for the applicant to be free of criminal charge of prostitution and sex crimes. That had been struck. A requirement for fingerprinting had been struck. The requirements needed for a license had been revised greatly. There were five conditions,

one of which had to be met to get a license: Documentation of 500 hours of board approved education in massage therapy; five years of practice; proof of current certification with a nationally accredited therapy organization; between 1-5 years of practice or between 1-5 years practice and 300 hours of formal training; or a valid license in another state that had requirements for licensing that would be similar to SB 358.

Proponents' Testimony:

Linda Lemire, Montana Chapter of American Massage Therapy Association, read and submitted her written testimony.
EXHIBIT (phs37a07)

Steven Biggs, Chiropractic Physician, said he was there as a proponent of SB 358. He said he heard **SEN. ELLIOTT** call massage therapy a trade and **Mr. Biggs** said it was not a trade. It was a portal of entry healthcare profession, and as such, people do not need a referral to see massage therapists. They go to see a massage therapist for pain problems and other healthcare problems without the benefit of previous diagnosis. It was because of this, the massage therapists needed to be regulated. Mr. Biggs said he used massage therapists extensively in his practice. They were an important adjunct to muscular skeletal problems. He said he had a problem with the fact that 90% of those who called themselves massage therapists in the Flathead Valley. He would not refer to them because he did not know if they were qualified. There were no minimum requirements, no board examinations, no disciplinary committees. There was nothing to inform him that they had at least done the minimum requirements to get licensed in a state and have some regulation. He said that looking at the state of Montana, all other healthcare providers were regulated by a board for the reason of enhancing public safety. The massage therapist he used, he had first hand knowledge of this person's experience and educational requirements. Another aspect was that he taught part-time in a massage therapy school. This school currently had 650 hours and was probably going to increase. He knew the students were taught by him, other massage therapists, a board certified internal medicine specialist, and a pain management specialist. With that knowledge, he was very comfortable realizing they had a standard model in minimum requirement necessary to allow him to refer his patients to them, and feel comfortable about the care they were going to get.

Diane Williford, Massage Therapist read and submitted her written testimony. **EXHIBIT (phs37a08)**

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Paul Weston, Massage Therapist, read and submitted his written testimony. **EXHIBIT (phs37a09)**

Cheri DesMarais, Massage Therapist, read and submitted her written testimony. **EXHIBIT (phs37a10)**

Bill Countryman, Helena, said he was testifying as a consumer of massage therapy. He said that most people thought when a massage was given, all that was experienced was lying on the table and being gently rubbed and made to feel relaxed and marvelous for an hour. He said it was a pleasant experience, but that he was 79 years old and had many aches and pains that men of his age would expect. He said he was extremely fortunate that his massage therapist was a well-educated wellness expert and literally kept him going at a good pace. He visited his massage therapist every two weeks for the last ten years and could say that when he was unable to do that, the difference in how he felt was amazing. It was because of this that he felt extremely fortunate to have educated body work available to him. It made a difference in his life and the health of his body.

Steve Anderson, Physical Therapists Association, read and submitted his written testimony. **EXHIBIT (phs37a11)**

Ruth Marion, Massage Therapist, read and submitted her written testimony. **EXHIBIT (phs37a12)**

Daryl Birch, Contact Comfort Incorporated, said he was there to represent Contact Comfort Inc., which was a massage therapy group in Superior, MT. He said his company was listed on the stock exchange as "bringing in and selling muscle technology." He said that was what he did. He taught many post graduate courses and many continuing education courses for present massage therapists. He said he was there because he had practiced and had a successful practice in California, where he worked with the Olympic team, Oregon, where he had worked with most groups, Washington and Alaska. Every one of those states had in place the structure for quality control, continuing education, and to maintain minimum standards of massage therapy. He found it different when he came to Montana. He said his first shock was when a client came to him and asked if he could use him in insurance. In California, Oregon, and Washington, because of his credentials, his background, and how carefully he was checked out, insurance companies gladly paid his bill. This was instead of more expensive bills with a physical therapist, possibly osteopathic medicine, massage therapy bills were reasonable compared with them. Mr. Birch called the insurance company and offered his name, expertise, his background, and that he was on

this with a prescription. The insurance company told him they did not pay any massage therapists in Montana. He was shocked and asked them why. The insurance company said it was because there were no governing board and no standards, they did not pay anyone carte blanche. They said they could not separate him from someone else and would not pay for an ineffectual massage. Mr. Birch said no insurance company would or any healthcare plan would. He said on the other side of the coin, in the other states, they carefully checked out his background, had the structure in place, and had a board that oversaw what he did. The board also allowed his clients access to give feedback to them. The board had rights, by law, to deal with him concerning the good, bad, or the indifferent. Without the structure in place, Montana was subject to anyone, anytime, anywhere, saying anything. He said he had six degrees on his wall for different modalities of massage therapy. Some degrees were 400 hours and more. He had well more than 1000 hours of education, and yet he was there with people who could go in for a 72-hour complete certification massage. He had a flyer to attest to that. He looked at the anatomy, physiology, kinesiology, and all the modalities, but in 72 hours. He asked the committee if they wanted a good massage, who would they go to. Would they go to someone who had their credentials and hours posted on their wall for everyone to see, which was a requirement in Oregon and Washington. Would they take a chance and go to someone with 72 hours, who was smart enough and good enough to continue his education to provide a quality healthcare service. He said this was what was missing in Montana and because it was missing in Montana, there was a system there with a large gap between qualified, good massage therapists capable of treating conditions and someone who would just put a person on a table and did some silly moves with their hands with oils. Mr. Birch said there was a long gap between 72 hours and a minimum of 600 to 1000 hours for the time, the effort, the education. Without the structure in place, Montana would always be left behind. He said he knew many brilliant people across the globe with his connections with the Olympic teams that would not come here. This included students who would not go from Montana, but to some place else. He said if he went from Montana to California, the first question that would be asked was what was his education, and then, what were the standards in Montana. He would immediately be subject to tests and be told he could not practice. The same practitioner with the proper laws in place could come to Montana, get reciprocity, have their education checked out, and be gratefully accepted as a member of the community and not have to jump through stressful hoops. If there were not minimum standards and if Montana did not maintain a minimum standard across the nation that was AMTA minimum standards, therapists from Montana literally could not go to any other state and practice. The schools would not be attractive enough for students to come here

and learn either. Mr. Birch said Montana needed this law. It was well written, and it covered all the questions needed by a competent massage therapist. The only people who would dislike this law are the ones who were unqualified and would have to jump through too many loops to become qualified.

Roland Byrd, Massage Therapist, read and submitted his written testimony. **EXHIBIT**(phs37a13)

Robert Kerrick Murray, Helena, read and submitted his written testimony. **EXHIBIT**(phs37a14)

Lisa Fairman, Helena, read and submitted her written testimony. **EXHIBIT**(phs37a15)

Ron Floyd, Massage Therapist, read and submitted his written testimony. **EXHIBIT**(phs37a16)

{Tape: 3; Side: A}

Connie Clark, Billings, said she was a consumer of massage therapy. Several years ago she injured her shoulder on the job. After four months of pre-surgery rehabilitation therapy and five months of post surgery rehabilitation therapy, she was in constant pain. The constant shoulder pain, backaches, and headaches disrupted her normal daily pattern. After nine months, her physical therapist recommended that she see a massage therapist. Her orthopedic surgeon also recommended a massage therapist. Ms. Clark said they both recommended the same therapist as well. After only three months with the massage therapist, her pain level had diminished immensely. After this positive experience, she was convinced that massage therapy played an important role in healing in the healthcare field. Therefore, education of injury and pathology were important education components to massage therapy curriculum. Massage therapists who had little education may not know their limits when working with injuries and may not know when, for the client's safety and health, to refer them to another healthcare professional. She said she wondered what would have happened if she had been sent to someone with almost no training in injuries. Her injuries could have been compounded and her shoulder could have been permanently injured. She said that she as a consumer had the right to know if she were entrusting her needs to an adequately trained and educated therapist. Licensing and certification was important to prevent further injuries in cases like hers. She asked for support of SB 358.

Nicole Kay, Massage Therapist, read and submitted her written testimony. **EXHIBIT**(phs37a17)

Opponents' Testimony:

Henry Cloud, Massage Therapist, said he had been a massage therapist for 15 years. He had taught at Good Medicine Massage School in Whitefish, for eight years. He taught at Montana School of Massage in Missoula for two years. For six years he had a private practice in Missoula in a clinic with six chiropractors, two acupuncturists, and a physical therapist. For six years he had a private contract with Missoula Developmental Services working on their clients who were severely mentally, physically, and emotionally disabled. He had a very successful practice with referrals in-house from the chiropractors, acupuncturists, and physical therapist. He had also from the greater community, referrals from physicians, neurologists, neurosurgeons, and orthopedic surgeons. He said there was an assumption from the proponents that those who would testify against the bill had a limited education. He said his record spoke for itself. Ten months ago he had received a postcard in the mail, inviting him to join an organizational meeting in Helena to put forward a bill for consideration. He said he went and sat there, and the next thing he knew he was on the Montana Coalition for Massage Therapy and Body Work. Over the last ten months with exhaustive research of existing and pending bills around the country, there had been discussions into the wee hours with his fellow coalition members and meetings in Helena, Bozeman, Boulder, and Missoula. The discussions had moved to compromise and then consensus. Following his last meeting as a coalition member in November, there had been a sudden and dramatic shift from the American Massage Therapy Association, AMTA representative. That shift moved toward unilateralism and divisiveness. When the coalition had a joint meeting with the AMTA board, he could not believe the changes that had been struck, deleted, added. It no longer resembled what they had worked very hard on and very diligently for nine months. Mr. Cloud said it saddened him to testify against the bill that day. There was a federation in the country called the Federation of Therapeutic Massage Bodywork and Somatic Practice Organizations. Among the members was the American Organization for Bodywork Therapies of Asia of which there was a representative on the coalition. The United States Trager Association had a member on the coalition. The American Polarity Association, The Feldenkrais Guild of North America and The Rolf Institute had members on the coalition. The AMTA was a member of the coalition. From the coalition meetings, they came up with forming a legislative coalition. He often reminded his coalition members that belonged to the organization that "any change that directly affects or limits the operation of a school, institute, or the ability of an individual therapist or practitioner to practice should go back to the coalition for discussion and decision." Mr. Cloud said that this was not done. The integrity of the

agreement was not done. The AMTA wanted a rubber stamp, not a coalition. In conclusion he read a statement titled "Opposition to SB 358". It read: "We the undersigned members of the Montana Coalition for massage Therapy and Bodywork [comprising a majority] are opposed to SB 358 and urged to table this bill. It is apparent to us that it would cause undue hardship to a significant number of massage therapists in this state at a time when good paying jobs are hard to come by. We also feel that this bill has undermined our intent of creating a fair and equitable law for all concerned. We have worked on this bill for nine months and are dismayed that major components of this bill have been drastically altered and/or deleted to serve the best interests of the AMTA and a few massage schools."

Erik Andersen, Massage Therapist, said the first thing he wanted to address was the proponents' view of education. He said he graduated from Eastern Montana College in 1977 with a B.S. degree. He had a major in business and a minor in physical education. He took anatomy, physiology, kinesiology. He said he and his wife were members of ABMP, a national organization that was equivalent to the AMTA. The organization had more than 40,000 nationwide and in Montana there were 153. ABMP had responded to the bill saying it was a poorly written bill. ABMP was dismayed at all the preparation that went into the bill. They had sent 1,100 surveys out to massage therapists in Montana, which was not reflected in the draft introduced. Mr. Andersen said the bill did not represent the main stream of massage therapists in the community. The bill did not include a grandfather clause, it did not provide for any reciprocity from any state, and as the bill was written, it would put many tax paying citizens out of work. He said he received his massage training in Seattle, Washington in 1992. He had taken 1000 hours of training plus continuing education courses. At that time, the national certification was in its infancy. He had practiced and had a school in Billings, MT that was in jeopardy as the bill stood currently. He said he had lived in Montana since he was a child in the 1960's and had been a tax paying citizen and gone through the changes of the economy. He said his family lost their ranch business in 1988. He knew first hand what it was like to lose his livelihood. He said if anyone had experienced that type of loss, they would know the pain and suffering that it caused when having to leave the family and friends to go somewhere else to make a living. The bill was unclear about several things. The bill was not in the best interests of Montana, its tax paying citizens, or the massage therapy group. He urged for a no vote to SB 358 as it was written.

Hervey Perez, Montana Association of Bodywork and Massage Therapy, read and submitted his written testimony.

EXHIBIT (phs37a18)

Esther DeRusha, School of Good Medicine Massage, read and submitted her written testimony. **EXHIBIT (phs37a19)**

Brenda Carpenter, Massage Therapist, read and submitted her written testimony. **EXHIBIT (phs37a20)**

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Jim Brown, Department of Labor & Industry, read and submitted his written testimony. **EXHIBIT (phs37a21)**

Nancy Dunne, American Association of Naturopathic Physicians, read and submitted her written testimony. **EXHIBIT (phs37a22)**

Viana Myles, St. John Neuromuscular, said there were 90 massage therapists on the mailing list for St. John Neuromuscular. She was there representing them to say they were against SB 358. They were not against legislation, but thought it to be a necessity. One thing that concerned them was with the combination of the definitions and the prohibitive acts. It would put neuromuscular therapists and many others who deal with injury and pain out of business. They believed the scope of practice would keep neuromuscular therapists from practicing St. John Neuromuscular therapy in the way that it was intended to be practiced. Ms. Myles said neuromuscular therapists, NT's, and other therapists had taken other higher education in the field and were concerned about the quality of care. She said the bill did not designate massage as a healthcare service. There were many hospitals that used massage therapy. There was a Ford Hospital in Detroit, Michigan that had been doing studies with the St. John Neuromuscular work and was positive of the outcomes.

Susan Carlson, Massage Therapist, spoke and submitted her written testimony. **EXHIBIT (phs37a23)**

Winthrop Benson, Licensed Massage Therapist, read and submitted his written testimony. **EXHIBIT (phs37a24)**

Patty Johnson, Laurel, read and submitted her written testimony. **EXHIBIT (phs37a25)**

Kim Keil, Massage Therapist, read and submitted her written testimony. **EXHIBIT (phs37a26)**

Sheri Anderson, Massage Therapist, read and submitted her written testimony. **EXHIBIT**(phs37a27)

Theresa Miller, Stillwater Chiropractic Clinic, read and submitted her written testimony. **EXHIBIT**(phs37a28)

Sharon Walker, Massage Therapist, read and submitted her written testimony. **EXHIBIT**(phs37a29)

Tony Rabino, Anaconda, read and submitted his written testimony. **EXHIBIT**(phs37a30)

Celeste Watson, Massage Therapist, read and submitted her written testimony. **EXHIBIT**(phs37a31)

Lindsay Schott, Whitefish, read and submitted her written testimony. **EXHIBIT**(phs37a32)

Patti Ford, Massage Therapist, read and submitted her written testimony. **EXHIBIT**(phs37a33)

{Tape: 4; Side: A}

Brenda Carpenter, Massage Therapist, said in her spa she had a wide curriculum of body wrap treatments using herbs and salts. There was a lot of training that she did personally for her staff. She had them go through a whole certification process before they could do any of those treatments. She said she would like to see that part addressed in a general way more.

Karen Roberts, Massage Therapist, read and submitted her written testimony. **EXHIBIT**(phs37a34)

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY, SD 9, Billings, said he looked in the Billings telephone book and found entries under massage and entries under massage therapeutic. He asked if this bill were to pass, the only type of commercial massage available would be by persons licensed under this statute. **SEN. ELLIOTT** said his understanding was that only a person who held himself as a massage therapist would be able to practice under the bill.

SEN. CROMLEY said he practiced in a profession that had a seamy side and there was a seamy side of massage and wondered if a consequence of the statute was to remove that seamy side, such as

prostitution. **SEN. ELLIOTT** said that it was an intended consequence and it was an intended consequence of the certification process. He said there was a case in Missoula last year of prostitution in a massage parlor. He also said there had been a masseur years ago, who had been convicted of several counts of rape and who assaulted women he massaged. This was why the good moral character clause in the bill was necessary.

SEN. CROMLEY said the one area of concern was that one of the few exceptions as gratuitous massage on a member of the immediate family. He asked if this removed the ability for the friend to give another friend any type of massage. **SEN. ELLIOTT** said he thought that to be the case but asked to refer the question to **Ms. LaMier**. **Ms. LaMier** said she did not think it would be something reported. She said that what the bill was intended to do was to scope out those who were trained for massage therapy and were called massage therapists and gratuitous massage was just one way to restrict it.

SEN. CROMLEY said there was a grandfather clause which was modified somewhat by the amendment **SEN. ELLIOTT** had passed out.

SEN. CROMLEY said it was not a grandfather clause in the true sense in that the people would eventually have to become certified. He said the fourth exception said it accepted someone if the person had 300 hours of formal training and 1-5 years of work as a massage therapy. He asked if he meant they had to have 300 hours training and a minimum of one year of work as a massage therapist. **SEN. ELLIOTT** said yes.

SEN. TRUDI SCHMIDT, SD 21, Great Falls, said testimony was heard that several things had been changed at the last minute, to avoid the seamy side and then to come up with a bill that everyone was comfortable with that lent to professionalism as well. Was there anyway both sides could work together to come up with something they could agree on. **Ms. Lemire** said she wanted to explain the amendments. They came into the bill after hearing feedback from individuals who felt the grandfather clause was too restrictive. A more reasonable grandfather clause was put together. She said that information was sent out to the schools, the AMTA, and the coalition. The representatives had the responsibility to inform their organizations.

SEN. SCHMIDT asked **Mr. Cloud** to respond to the same question. **Mr. Cloud** said that regarding grandfathering, the coalition agreed to the following, "practitioners shall be allowed to become licensed if they satisfied one of the following requirements: documentation of 300 hours of formal massage therapy education, including anatomy and physiology as approved by the board; or, documentation of five continuous years of professional practice

in massage therapy or body work; or, successful passage of a national certification examination administered by a national certification board accredited by a national accrediting agency such as the National Commission for Certifying Agencies. For anyone who is currently in practice at the time the bill is installed but does not meet any of the above criteria, will have five years to meet the 600 hour minimum standard." **Mr. Cloud** said the bill did not resemble what was initially submitted in SB 358. The proponents slashed the bill and instituted provisional licenses which was never mentioned in the coalition. The reason they back pedaled was because of the uproar of the opponents across the state. **Mr. Cloud** said he received numerous angry phone calls over the last two weeks regarding the changes. He said there was not good faith.

SEN. JERRY O'NEIL, SD 42, Columbia Falls, said that one of the proponents stated the bill was needed to get paid by insurance companies. He had said he received payments for massage therapy in other states, but not in Montana. What kind of payments could be expected if the bill were to pass. **SEN. ELLIOTT** referred the question to **Ms. Marion**. **Ms. Marion** said her understanding of the whole picture with insurance reimbursement was that most insurance companies required that the practitioner was licensed. Some insurance companies often ask first if it were a licensed practice. In the state of Washington there was a law passed that required insurance companies to reimburse for the services of all licensed healthcare practitioners. They could not leave out acupuncturists or other practitioners. **Ms. Marion** said the intent of the bill did not really have anything to do with insurance reimbursement because it varies from company to company. The first step was to have a practice act, then later there might be conversation about insurance.

SEN. O'NEIL asked if with the credentials could she receive Medicaid reimbursement. **Ms. Marion** said no. She said Medicaid was a whole other ball game. She was not aware of any Medicaid reimbursement.

SEN. O'NEIL asked the same question to **Mr. Cloud**. **Mr. Cloud** said it depended on the insurance company and what their criteria was. In his own practice, he had never had an insurance adjuster ask if he were licensed. Approximately 60% of his business was through insurance billing. He said he would be happy to counsel **Mr. Birch** at no charge on how to do that.

SEN. O'NEIL asked if he had ever received Medicaid payment through the state of Montana. **Mr. Cloud** said no, but did receive payment from Workmen's Compensation.

SEN. ROBERT DEPRATU, SD 40, Whitefish, said he was going to restate **SEN. SCHMIDT'S** question and be blunt. He asked for a representative from each side to respond to the question. He said executive action needed to happen by Friday due to transmittal, coming up on the 45th working day. If the bill were to pass, it would move to the Senate floor and if it passed there, move onto the House. They in turn had to get the bill back to the Senate. He said with that in mind, executive action had to be done by Friday. His question to both of them was would they sit and work to find common ground, or should the committee go ahead and take executive action. **Ms. Carlson** asked that the proponents speak first. **Ms. Lemire** said they would be willing to work with the opponents. **Ms. Carlson** said for herself and many of her colleagues that it was difficult to be slapped up side the head and be told they were ignorant and unimportant and then be asked to participate with the group that played unfairly. She said she thought she could speak for the opposing side. She did not think they could come together for this legislative session after the lack of trust, lack of integrity, and lack of ethical behavior. She thought they were insurmountable barriers and that it would be impossible to take up residence with the people that proposed the legislation.

SEN. DUANE GRIMES, SD 20, Clancy, asked **Mr. Brown** who was included under the umbrella on the alternative board and if it pertained to the therapy group. **Mr. Brown** said the alternative healthcare board regulated naturopathic physicians and direct entry midwives only.

SEN. GRIMES asked if he had any idea on where some of the other boards might be, such as the occupational therapy, physical therapy, or possibly the orthopedic. Did he have any feedback. **Mr. Brown** said he did not. He did not believe those boards had been specifically contacted.

SEN. SCHMIDT asked **Brenda Carpenter** to respond to **SEN. DEPRATU'S** question. **Ms. Carpenter** said she did not want to speak for everybody, although she supported **Ms. Carlson** and what she said. She said however, the bill came close to passing and that regulation was needed and would like to sit with the proponents to find some common ground in the next 72 hours.

{Tape: 4; Side: B}

Closing by Sponsor:

SEN. ELLIOTT said he wanted to answer some of the concerns of the opponents. He admitted the amendments were brought in at the last minute. The amendments were brought in attempt to address

concerns some opponents had expressed through many emails to him and to **Ms. Lemire**. He said he wanted to apologize to those opponents he had not gotten back to in his emails because his time was restricted. He said the question was raised about reciprocity and there was reciprocity in the bill. There were concerns it would put people out of work. He believed the majority would be grandfathered into the organization if the bill were to pass. **SEN. ELLIOTT** said he was not sure other than that what was expressly objected to in the bill. He thought that for those not having seen the amendments was a large part of it. He said he wanted to speak to the range of motion issue. He was told that it was a term of art that required a college degree and three years of post graduate study. The alternative healthcare board might not want the responsibility, but they worked for the people of Montana and not the other way around. He said he knew the alternative healthcare board had worked with the coalition extensively to come to some kind of accommodation. There was not agreement on the bill. There was always a 1% that messed it up for the others, but it was the 1% from which the public needed to be protected. It was not from the responsible practitioners and professionals that had come and testified for or against the bill. A professional needed to know when to do and not to do something and when something was not enough or too much. **SEN. ELLIOTT** referred to what a French philosopher was once asked how he knew when he had too much to drink or had enough to drink. The philosopher said when he had too much. **SEN. ELLIOTT** said at that point it was too late. There needed to be knowledge beforehand. He said the people who worked on the bill, worked hard to satisfy those with opposing view points. Their efforts were sincere. He hoped both sides would work together to amend the bill in a way both could support.

{Tape: 5; Side: A}

ADJOURNMENT

Adjournment: 8 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs37aad)